

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MEDTRICA SOLUTIONS LTD., a Canada
corporation,

Plaintiff,

v.

CYGNUS MEDICAL, LLC, a Connecticut
limited liability company,

Defendant.

CASE NO.

COMPLAINT FOR
DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

Plaintiff Medtrica Solutions Ltd. (“Medtrica” or “Plaintiff”), for its Complaint against Defendant Cygnus Medical, LLC (“Cygnus” or “Defendant”), states and alleges the following:

INTRODUCTION

1. This action arises under the Declaratory Judgment Act, 28, U.S.C. § 2201, *et seq.* Plaintiff seeks a declaration that U.S. Patent No. 7,648,023 (the “’023 Patent”) is invalid and not infringed by Plaintiff.

2. Defendant Cygnus has accused Plaintiff Medtrica of infringing the ‘023 Patent by selling its Appli-Kit branded bedside pre-clean kit in the United States. All of the claims Defendant accuses Plaintiff of infringing, namely, claims 1-4, 10, and 11, require that there be

COMPLAINT FOR DECLARATORY
RELIEF - 1

LANDSMAN & FLEMING LLP

1000 Second Avenue, Suite 3000
Seattle, Washington 98104
Telephone: (206) 624-7900 Facsimile: (206) 624-7903

1 “at least one weakened line in the front and back sidewall panels” of a pouch. Among other
2 things, however, the pouch component of Plaintiff's Appli-Kit branded bedside pre-clean kit
3 does not include, either literally or equivalently, “at least one weakened line in the front and
4 back sidewall panels.” Therefore, Plaintiff's sale in the United States of its Appli-Kit branded
5 bedside pre-clean kit does not infringe U.S. Patent No. 7,648,023.

6 **THE PARTIES**

7 3. Plaintiff Medtrica Solutions Ltd. is a Canada corporation, with its principal
8 place of business in Vancouver, British Columbia, Canada. All material books and records
9 related to Plaintiff's Appli-Kit branded bedside pre-clean kit are located at Plaintiff's principal
10 place of business, and the principal witnesses for Plaintiff related to its claims herein are
11 located in Vancouver, British Columbia, Canada.

12 4. Defendant Cygnus Medical, LLC is a Connecticut corporation, with offices in
13 Branford, Connecticut.

14 **JURISDICTION AND VENUE**

15 5. The Court has subject matter jurisdiction over this action under at least 28
16 U.S.C. §§ 1331, 1338(a), 2201, and 2202. There is an actual case and controversy within this
17 Court's jurisdiction regarding non-infringement and invalidity of the '023 Patent.

18 6. On information and belief, Defendant distributes, promotes, markets, sells,
19 offers for sale, and/or advertises its products in this District and to businesses and individuals
20 in this District. Thus, this Court has personal jurisdiction over Defendant and venue is proper
21 in this Court pursuant to 28 U.S.C. § 1391(b) and (c).

22 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

23 7. On or about March 5, 2012, Defendant sent Plaintiff a letter accusing Plaintiff
24 of infringing the '023 Patent by selling its Appli-Kit branded bedside pre-clean kit. A true
25 and correct copy of that letter is attached hereto as Exhibit A. In its March 15, 2012 letter,
26 Defendant demanded that Plaintiff immediately cease sales of the accused product and

1 provide it with an accounting of all sales to date, failing which, Defendant stated that it would
2 “consider appropriate action to enforce Cygnus’ intellectual property rights.”

3 8. Plaintiff contends that the ‘023 Patent is not infringed by its sales of its Appli-
4 Kit branded bedside pre-clean kit.

5 9. Plaintiff also contends, on information and belief, that the ‘023 Patent is
6 invalid under either Section 102 or Section 103 of the Patent Act, 35 U.S.C. §§ 102, 103.

7 10. Under these circumstances, there is a present and substantial case or
8 controversy between Plaintiff and Defendant that is of sufficient immediacy and reality to
9 justify the issuance of a declaratory judgment regarding the parties’ respective rights as they
10 relate to the alleged infringement and validity of the claims of the ‘023 Patent.

11 **FIRST CLAIM FOR RELIEF**

12 **(Declaratory Relief)**

13 11. Plaintiff incorporates and realleges herein by this reference Paragraphs 1
14 through 8, inclusive, as though set forth in full herein.

15 12. As described above, there exists a present and immediate controversy between
16 Plaintiff and Defendant. Plaintiff contends that its Appli-Kit branded bedside pre-clean kit
17 does not infringe, either directly, indirectly, by contribution, or by inducement, or in any way,
18 any claim of the ‘023 Patent, either literally or under the doctrine of equivalents. Defendant,
19 on the other hand, contends that Plaintiff’s Appli-Kit branded bedside pre-clean kit infringes
20 the ‘023 Patent. Also, Plaintiff contends that the ‘023 Patent is invalid, whereas Defendant
21 contends that the ‘023 Patent is valid.

22 13. Thus a judiciable controversy exists between the parties which is subject to this
23 action for declaratory relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For a judgment and declaration that its Appli-Kit branded bedside pre-clean kit does not infringe the '023 Patent;
2. For a judgment and declaration that the '023 Patent is invalid;
3. For a finding that this case is exceptional and an award of its reasonable attorney's fees and costs under 35 U.S.C. § 285; and
4. For such further relief as the Court deems fair and appropriate.

DATED this 26th day of March, 2012.

LANDSMAN & FLEMING LLP

By: /s/ R. Broh Landsman
R. Broh Landsman (WSBA #9321)
Attorneys for Plaintiff MEDTRICA
SOLUTIONS, LTD.
1000 Second Avenue, Suite 3000
Seattle, WA 98104
Phone: (206) 624-7900
Fax: (206) 624-7903
broh@LF-law.com

JEFFER MANGELS BUTLER & MITCHELL LLP

By: /s/ Rod S. Berman
Rod S. Berman (CA Bar No. 105444), pro
hac vice application submitted herewith
Jessica C. Bromall (CA Bar No. 235017),
pro hac vice application submitted herewith
Attorneys for Plaintiff MEDTRICA
SOLUTIONS, LTD.
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067
Phone: (310) 203-8080
Fax: (310) 203-0567
rberman@jmbm.com
jbromall@jmbm.com

COMPLAINT FOR DECLARATORY
RELIEF - 4

LANDSMAN & FLEMING LLP
1000 Second Avenue, Suite 3000
Seattle, Washington 98104
Telephone: (206) 624-7900 Facsimile: (206) 624-7903

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby
demands trial by jury.

LANDSMAN & FLEMING LLP

By: /s/ R. Broh Landsman
R. Broh Landsman (WSBA #9321)
Attorneys for Plaintiff MEDTRICA
SOLUTIONS, LTD.
1000 Second Avenue, Suite 3000
Seattle, WA 98104
Phone: (206) 624-7900
Fax: (206) 624-7903
broh@LF-law.com

JEFFER MANGELS BUTLER & MITCHELL LLP

By: /s/ Rod S. Berman
Rod S. Berman (CA Bar No. 105444), pro
hac vice application submitted herewith
Jessica C. Bromall (CA Bar No. 235017),
pro hac vice application submitted herewith
Attorneys for Plaintiff MEDTRICA
SOLUTIONS, LTD.
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067
Phone: (310) 203-8080
Fax: (310) 203-0567
rberman@jmbm.com
jbromall@jmbm.com

EXHIBIT A

St. Onge Steward Johnston & Reens LLC

986 Bedford Street
Stamford, Connecticut
06905-5619
ssjr.com

+1 203 324-6155 TEL
+1 203 327-1096 FAX



March 5, 2012

VIA Facsimile
310-263-9098
& FEDEX Trk. No.
7933 0272 5629

President
Medtrica Solutions
14017 Ocean Gate Avenue
Hawthorne, CA
USA 90250

Re: SSJR File 03921-I0014A
Investigation of patent infringement by Medtrica

Dear Sir or Madam:

Our firm represents Cygnus Medical, LLC (hereinafter "Cygnus") in its intellectual property matters. Cygnus owns numerous United States patents, including U.S. Patent No. 7,648,023 ("the '023 patent"). A copy of the '023 patent is enclosed.

It has come to our attention that Medtrica Solutions (hereinafter "Medtrica") is making, offering for sale, and/or selling a product in the United States that infringes numerous claims of the '023 patent. Medtrica's infringing product of which we are presently aware is the "Appli-Kit" flexible endoscope bedside pre-clean kit. (See enclosed online brochure advertising product and listing Medtrica contact info; retrieved from <http://www.yourceba.net/sponges-enzyme-detergent-cleaning.pdf>).

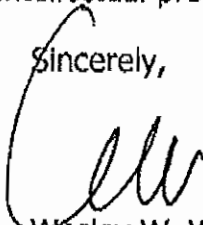
Based on the specimen and information we have obtained, this product appears to infringe at least Claims 1-4, 10, and 11 of the '023 patent. The making, using, selling and/or offering for sale of this or any other endoscope pre-clean kit of a similar design in the United States constitutes infringement of the '023 patent.

In view of the above, Cygnus demands that Medtrica immediately stop making, using, offering for sale and selling in the United States any products, including the Appli-Kit, that infringe the '023 patent. Cygnus also demands that Medtrica provide Cygnus' undersigned attorneys a full accounting of all sales of the Appli-Kit in the United States so that Medtrica's infringement liability can be determined.

Medtrica Solutions
March 5, 2012
Page 2

Unless we receive a response to this letter by March 19, 2012, we shall assume Medtrica does not wish to resolve this matter in an amicable business manner and will consider appropriate action to enforce Cygnus' intellectual property rights.

Sincerely,



Wesley W. Whitmyer, Jr.
wwhitmyer@ssjr.com

WWW:TMO:BLR
Enclosures